principal case is absolutely void for usury and no action would lie on the instrument. In the ordinary case arising under the New York statute, it would be contrary to the policy of the statute to allow the lender to recover even his principal, for the contract is expressly made altogether void. But where the lender is an innocent party, as in the principal case, since to refuse recovery would allow the borrower to profit by his own wrong at the expense of one who is entirely innocent, it seems proper to impose a quasi-contractual liability and allow the mortgage to be enforced to this extent. See *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 171 U. S. 138, 152. This, rather than estoppel, seems to be the true basis of the highly just result of the principal case and of other New York decisions in accord. *Payne* v. *Burnham*, 62 N. Y. 69; *Verity* v. *Sternberger*, 62 N. Y. App. Div. 112, 70 N. Y. Supp. 894, aff'd 172 N. Y. 633, 65 N. E. 1123. But where in addition to the representation involved in the mere act of transfer there is an express representation that the instrument is valid, the New York courts, on the ground that the mortgagor is estopped to set up the usury, allow a recovery in full upon the instrument. *Rider* v. *Gallo*, 153 N. Y. App. Div. 334, 137 N. Y. Supp. 1015; *Union Dime Savings Institution* v. *Wilmot*, 94 N. Y. 221; *cf. Hurlbut & Sons* v. *Straub*, 54 W. Va. 303. This seems wrong, since it is not possible to be estopped into liability on an absolutely void contract. See 19 HARV. L. REV. 454.

VESTED, CONTINGENT, AND FUTURE INTERESTS — FUTURE INTERESTS IN PERSONALTY — ACTION FOR DAMAGES TO CHATTEL, BY EXECUTORY LEGATEE AGAINST EXECUTOR OF FIRST HOLDER. — A necklace was bequeathed to A, with remainder to B in the event of A's dying childless. The contingency occurred, and B now sues A's estate to recover for damage done to the necklace by A and for the loss of part of it. *Held*, that B can recover. *In re Swan*, 10 Wkly. Notes 113 (Ch. Div.).

There has been much controversy on the question whether interests in chattels personal are executory or are vested when a corresponding interest in realty would be. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 117 *a*; 14 HARV. L. REV. 397. In the principal case, however, that problem is not involved, as the bequest to B after A's absolute estate is on any view executory. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 835. In the analogous situation in realty, damage to the property by the first owner is an immediate wrong to the executory devisee. This is shown by the fact that he may at once enjoin waste. *Turner* v. *Wright*, 2 DeG., F. & J. 234. In the case of a contingent remainder, where the prior estate must certainly determine in favor of someone, damages for part waste are also recoverable, but will be impounded for the benefit of whomever later proves to be entitled. *Watson* v. *Wolff-Coldman Realty Co.*, 95 Ark. 18, 128 S. W. 581. But in an executory devise, as the contingency ending the first estate may never arise, no such damages can be given. *Ohio Oil Co.* v. *Doughetee*, 240 Ill. 361, 88 N. E. 818. As soon as the executory devisee comes into possession, however, as he is now ascertained, the objections to allowing him a remedy vanish. A wrong with a suspended remedy is not anomalous; for example, an ultimate remainderman who had no action for waste may sue if the intermediate estate subsequently lapsed. See *Duval* v. *Waters*, 1 Bland (Md.) 569, 573. It is submitted that the same result should be reached in the case of chattels, and as the injury is to property it should survive. See *Jenkins* v. *French*, 58 N. H. 532. The court in the principal case, while correct in decision, was troubled with the survivorship point and avoided it by the questionable discovery of a trust or bailment in the first holder.

WITNESSES — EXAMINATION — CROSS-EXAMINATION TO CREDIT: INTEREST OF WITNESS IN OUTCOME OF SUIT. — In a suit for personal injuries the defendant called as a witness the conductor in charge of the car which had caused the damage. On cross-examination the plaintiff sought to discredit the wit-

ness by proving his contract of employment, which provided that the employer might reimburse himself for all damages caused by the negligence of the conductor by deducting the sum from his wages. The evidence was excluded. *Held*, that this is reversible error. *Henry* v. *Tacoma Ry. & Power Co.*, 219 Fed. 874 (C. C. A., 9th Circ.).

Although the old rule disqualifying a witness pecuniarily interested in the result of a suit has been almost everywhere abolished, nevertheless it is proper to discredit the testimony of a witness by showing interest. *Luckhurst* v. *Schroeder*, 149 N. W. 1009, 1012 (Mich.); see 2 WIGMORE, EVIDENCE, § 969. Therefore it has been held that the fact that a witness is employed by one of the parties to the suit may be considered by the jury as bearing on his credibility. *Donley* v. *Dougherty*, 174 Ill. 582, 51 N. E. 714. *Cf. Marquette, H. & O. R. Co.* v. *Kirkwood*, 45 Mich. 51, 7 N. W. 209. In addition, the servant's common-law liability for his own negligence may be pointed out. See *Hamilton* v. *Chicago, M. & St. P. Ry. Co.*, 103 Ia. 325, 331, 72 N. W. 536, 538. The contract in the principal case, since it gives the employer the right to deduct from the conductor's wages, in addition to his common-law right to reimbursement, increases the employee's pecuniary interest in the outcome of the suit. It correspondingly intensifies the temptation to lie, and should be admissible to discredit the witness. Accordingly, the result of the principal case is questionable only in that it reverses the trial judge on a point resting so largely within his discretion. *Miller* v. *Smith*, 112 Mass. 470, 476; see 2 WIGMORE, EVIDENCE, § 944.

WITNESSES — PRIVILEGED COMMUNICATIONS — HUSBAND'S LETTERS TO WIFE. — In a prosecution for bigamy, the state offered letters from the husband to the alleged first wife to establish the fact of that marriage. These letters had fallen into the hands of a third person, and were then secured by the prosecution. *Held*, that the letters are admissible. *McNeill* v. *State*, 173 S. W. 826 (Ark.)

The privilege not to have private communications between husband and wife disclosed may be waived, since the evidence itself is not fundamentally inadmissible. See *Perry* v. *Randall*, 83 Ind. 143, 146; *Stickney* v. *Stickney*, 131 U. S. 227, 237. *Contra*, *Goodrum* v. *State*, 60 Ga. 509. But the privilege belongs not to the addressee alone, but to the communicating party, or possibly to both. *Derham* v. *Derham*, 125 Mich. 109, 83 N. W. 1005. A voluntary delivery, therefore, by the addressee should not suffice to waive the privilege. *Mahner* v. *Linck*, 70 Mo. App. 380; *Wilkerson* v. *State*, 91 Ga. 729, 17 S. E. 990. But where the letter is originally sent with knowledge that it will be read by a third person there is clearly no privilege. *De Leon* v. *Territory*, 9 Ariz. 161, 80 Pac. 348. Again, a conversation overheard is similarly unprivileged, for although there is no intention to publish the communication, there is a publication by the act of the person entitled to the privilege. *Commonwealth* v. *Everson*, 29 Ky. L. Rep. 760, 96 S. W. 460; *Commonwealth* v. *Griffin*, 110 Mass. 181. Where a third party obtains the letter without the consent of the other spouse there is clearly no publication, but the weight of authority, in accord with the principal case, makes no distinction and holds the privilege equally inoperative. *Hammons* v. *State*, 73 Ark. 495, 84 S. W. 718; *State* v. *Hoyt*, 47 Conn. 518; *State* v. *Buffington*, 20 Kan. 599. *Contra*, *Scott* v. *Commonwealth*, 94 Ky. 511, 23 S. W. 219; *Bowman* v. *Patrick*, 32 Fed. 368. A further ground of the decision is that the defendant, by denying the validity of the first marriage, is precluded from asserting the privilege of a spouse. Since the burden of establishing a privilege falls upon the party attempting to assert it, it is immaterial that it is equally inconsistent for the prosecution, while asserting the validity of the first marriage, to object to the assertion of the privilege. *Contra*, *State* v. *Ulrich*, 110 Mo. 350, 19 S. W. 656.